

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JULIO MAYEN, *on his own behalf and on behalf of all others similarly situated,*

Plaintiff,

v.
W.M. BOLTHOUSE FARMS, INC., et al.,

Defendants.

No. 1:21-cv-00318-DAD-BAK (EPG)

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT W.M.
BOLTHOUSE FARMS, INC.'S MOTION TO
DISMISS

(Doc. No. 8)

The matter is before the court on the motion to dismiss filed by defendant W.M. Bolthouse Farms, Inc. (“Bolthouse”) on April 5, 2021.¹ (Doc. No. 8.) Pursuant to General Order No. 617 addressing the public health emergency posed by the COVID-19 pandemic, the motion was taken under submission on the papers. (Doc. No. 10.) For the reasons explained below, the court will grant in part and deny in part defendant Bolthouse’s motion to dismiss.

¹ The undersigned apologizes for the excessive delay in the issuance of this order. This court’s overwhelming caseload has been well publicized and the long-standing lack of judicial resources in this district long-ago reached crisis proportion. While that situation was partially addressed by the U.S. Senate’s confirmation of district judges for two of this court’s vacancies on December 17, 2021 and June 21, 2022, another vacancy on this court with only six authorized district judge positions was created on April 17, 2022. For over twenty-two months the undersigned was left presiding over approximately 1,300 civil cases and criminal matters involving 735 defendants. That situation resulted in the court not being able to issue orders in submitted civil matters within an acceptable period of time and continues even now as the undersigned works through the predictable backlog. This has been frustrating to the court, which fully realizes how incredibly frustrating it is to the parties and their counsel.

BACKGROUND

2 Plaintiff Julio Mayen originally filed a wage-and-hour class action complaint in Kern
3 County Superior Court on October 28, 2020 against defendant MA Medina Farm Labor Services,
4 Inc. (“Medina”) and Does 1 through 100, alleging violations of California’s Labor Code,
5 California’s Unfair Competition Law (UCL), and the Migrant and Seasonal Agricultural Worker
6 Protection Act (AWPA). (Doc. No. 1 at 12–31.) On January 25, 2021, having discovered the
7 true names of Does 1–4, plaintiff amended his complaint in state court to name defendant
8 Bolthouse as Doe 1, defendant Bolt House Farms as Doe 2, defendant Bolthouse Farms Cuyama
9 Cuyama as Doe 3, and defendant Bolthouse Farms Kern County as Doe 4 (the “FAC”).² (*Id.* at
10 8–11.) No other amendments were made to plaintiff’s original complaint aside from the
11 identification of Does 1–4. After being served with plaintiff’s FAC, defendant Bolthouse timely
12 filed a notice of removal in this federal court pursuant to 28 U.S.C. § 1331. (*Id.* at 2–3.) In
13 plaintiff’s operative FAC, he alleges as follows.

14 “Defendants,” which plaintiff uses to refer collectively to defendant Medina and Does 1
15 through 100, “are farm labor contractors that are engaged in providing agricultural
16 workers/employees who work on land located in Kern County, California that is owned by
17 various companies.” (*Id.* at 19, ¶ 17.) Plaintiff alleges that defendants “employed . . . thousands

18 ² This court’s docket reflects that only defendant Bolthouse has appeared in this action and
19 plaintiff has not filed any proof of service with respect to the remaining four defendants, despite
20 the removal of this action occurring over 17 months ago. In the notice of removal, however,
21 defendant Bolthouse maintains that defendant Medina “was served in December 2020” and
22 “consents to the removal,” but in regard to the other three named defendants, Bolthouse merely
23 states in a footnote that they are not “properly named entit[ies].” (Doc. No. 1 at 2–3.) On August
24 3, 2022, the assigned magistrate judge issued an order to show cause why the case against
25 defendants Bolt House Farms, Bolthouse Farms Cuyama, and Bolthouse Farms Kern County
26 should not be dismissed for failure to complete service pursuant to Federal Rule of Civil
27 Procedure 4(m). (Doc. No. 17.) Pursuant to the assigned magistrate judge’s order, plaintiff was
28 further directed to file, no later than August 16, 2022, proof of service as to these three
defendants, or a response demonstrating plaintiff’s good cause for failing to complete service on
these three defendants and explaining when he can complete such service. (*Id.* at 2.) In addition,
plaintiff was “cautioned that failure to respond to this order to show cause may result in the
dismissal of these Defendants from the action.” (*Id.* at 3.) Accordingly, because the deadline for
plaintiff to respond to the order to show cause has now passed and plaintiff has not filed any
response, the court will dismiss defendants Bolt House Farms, Bolthouse Farms Cuyama, and
Bolthouse Farms Kern County from this action.

of seasonal agricultural workers in its harvesting, field packaging and packaging business.” (*Id.* at 19, ¶ 17.) Specifically, “Plaintiffs entered into working arrangements with Defendants,” which were “formed and entered into each season” when “Defendants hire each plaintiff.” (*Id.* at 19, ¶ 19.) Although plaintiff lumps all defendants together in his FAC, alleging that all “Defendants were the employers of Plaintiff and the Class” (*id.* at 29, ¶ 49³), he also alleges, specifically, that defendant Medina was his former employer and is the current and former employer of the putative class members. (*Id.* at 14, ¶ 4.) No other defendant aside from Medina is mentioned by name in the allegations of the FAC. Instead, plaintiff merely alleges that all defendants are “the managerial agent, employee, predecessor, successor, joint-venturer, co-conspirator, alter ego and/or representative of one or more of the other Defendants” and “the agents, servants, and/or employees of each of the other Defendants,” such that all defendants “are jointly and severally liable to the Plaintiff, and the Class.” (*Id.* at 15, ¶¶ 7–8.) Finally, nowhere in the FAC does plaintiff allege when he worked for defendant Medina or the other defendants, or when the alleged misconduct took place.⁴

Approximately one month after the removal of the action to this federal court, on April 5, 2021, defendant Bolthouse filed the pending motion to dismiss contending that: (i) eight of the nine causes of action asserted by plaintiff are barred by the applicable statute of limitations; (ii) there are insufficient facts alleged to state any cognizable claims against defendant Bolthouse as a joint employer of plaintiff and that dismissal of all of plaintiff’s nine claims is warranted; and (iii)

³ This paragraph is misnumbered in the FAC and should be paragraph 81. (Doc. No. 1 at 29.)

⁴ The FAC asserts the following nine claims against all defendants: (1) failure to pay overtime wages in violation of California Labor Code §§ 218.5, 1194 & Wage Order; (2) failure to pay minimum wages in violation of California Labor Code §§ 200, 203, 218.5, 558, 1194, 1194.2, 1197 & Wage Order; (3) failure to provide itemized wage statements in violation of California Labor Code § 226 & Wage Order; (4) failure to pay wages upon termination and/or resignation in violation of California Labor Code §§ 201–203 & Wage Order; (5) failure to provide rest breaks in violation of California Labor Code § 226.7 & Wage Order; (6) failure to provide meal periods in violation of California Labor Code §§ 226.7, 512, & Wage Order; (7) failure to reimburse for expenses reasonably incurred in violation of California Labor Code §§ 2802, 29 U.S.C. § 1832(c) & Wage Order; (8) violation of the federal AWPA, 29 U.S.C. §§ 1831, 1832; and (9) violation of the California UCL, California Business and Professions Code, §§ 17200 *et seq.* (Doc. No. 1 at 23–30.)

1 the court should stay or dismiss this action under *Colorado River Water Conservation District v.*
2 *United States*, 424 U.S. 800 (1976) because a nearly identical action brought by a different
3 plaintiff is pending against the same five defendants in state court. (Doc. No. 8.) Attached to
4 defendant Bolthouse's pending motion to dismiss is: (i) a declaration from its counsel with three
5 exhibits, including a copy of the complaint in the alleged parallel state court action (Doc. No. 8-
6 1), and (ii) a declaration of Iliana Lopez, a manager for defendant Medina to which is attached
7 one exhibit, a payroll earnings record for plaintiff maintained in defendant Medina's ordinary
8 course of business that is offered in support of defendant Bolthouse's statute of limitations
9 argument for dismissal (Doc. No. 8-2). On May 4, 2021, plaintiff filed an opposition to the
10 pending motion responding to some, but not all, of defendant Bolthouse's arguments. (Doc. No.
11 11.) Defendant Bolthouse filed a reply thereto on May 11, 2021. (Doc. No. 12.)

LEGAL STANDARD

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A claim for relief must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Though Rule 8(a) does not require detailed factual allegations, a plaintiff is required to allege “enough facts to state a claim for relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. In determining whether a complaint states a claim on which relief may be granted, the court accepts as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). The court may also consider material that is properly submitted as part of the complaint, documents that are not physically attached to the complaint if their authenticity is not contested

1 and the plaintiff's complaint necessarily relies on them, and matters of public record. *Lee v. City*
2 *of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). However, it is inappropriate to assume
3 that the plaintiff “can prove facts that it has not alleged or that the defendants have violated the . .
4 . laws in ways that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State*
5 *Council of Carpenters*, 459 U.S. 519, 526 (1983).

6 ANALYSIS

7 A. Whether to Incorporate Plaintiff's Earnings Statement into the FAC

8 Defendant Bolthouse first urges the court to incorporate by reference one of plaintiff's
9 earnings statement as the basis for its argument that plaintiff's first through eighth claims are
10 barred by the applicable statute of limitations. (Doc. No. 8 at 13.)

11 “As a general rule, ‘a district court may not consider any material beyond the pleadings in
12 ruling on a Rule 12(b)(6) motion.’” *Lee*, 250 F.3d at 688 (quoting *Branch v. Tunnell*, 14 F.3d
13 449, 453 (9th Cir. 1994)). Doing so would convert a motion to dismiss for failure to state a claim
14 under Rule 12(b)(6) into a motion for summary judgment under Rule 56. See Fed. R. Civ. P.
15 12(d). However, courts do recognize two exceptions to this rule: “the incorporation-by-reference
16 doctrine, and judicial notice under Federal Rule of Evidence 201.” *Khoja v. Orexigen
Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).

17 The Ninth Circuit has explained the incorporation-by-reference doctrine as follows:
18 “incorporation-by-reference is a judicially created doctrine that treats certain documents as
19 though they are part of the complaint itself. The doctrine prevents plaintiffs from selecting only
20 portions of documents that support their claims, while omitting portions of those very documents
21 that weaken—or doom—their claims.” *Khoja*, 899 F.3d at 1002. Even if not directly attached to
22 a complaint, a document “may be incorporated by reference into a complaint if the plaintiff refers
23 extensively to the document or the document forms the basis of the plaintiff's claim.” *United
States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). That said, a complaint's “mere mention of
24 the existence of a document is insufficient to incorporate the contents of a document.” *Coto
Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). Moreover,

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1 if the document merely creates a defense to the well-pled
 2 allegations in the complaint, then that document did not necessarily
 3 form the basis of the complaint. Otherwise, defendants could use
 4 the doctrine to insert their own version of events into the complaint
 5 to defeat otherwise cognizable claims.

6 *Khoja*, 899 F.3d at 1002 (explaining that “the doctrine is not a tool for defendants to short-circuit
 7 the resolution of a well-pleaded claim”). Finally, whether the district court incorporates a
 8 document by reference is a matter of discretion. *See Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d
 9 1152, 1159 (9th Cir. 2012) (“[T]he district court may, but is not required to incorporate
 10 documents by reference.”).

11 Here, the court will exercise its discretion to *not* incorporate a payroll earnings record
 12 purportedly showing plaintiff’s entire work history of only three weeks with defendant Medina
 13 (“Medina payroll record”) as part of plaintiff’s operative FAC. (Doc. No. 8-2 at 5.) Defendant
 14 Bolthouse argues that the Medina payroll record is “an integral part of [plaintiff’s] allegations
 15 because [it] evidence[s] his last day of employment with Medina at a Bolthouse location,”
 16 necessarily relied upon by plaintiff in his noncompliant wage statement claim, and incorporated
 17 by reference vis-à-vis plaintiff’s allegations appearing in paragraphs 3–4, 29, and 52–56 of the
 18 FAC. (Doc. No. 8 at 13.) However, plaintiff’s FAC simply does not refer to or mention the
 19 Medina payroll record, nor indeed are any specific payroll records mentioned in the FAC,
 20 including in the paragraphs that defendant Bolthouse directs the court’s attention to. As an initial
 21 matter, this strongly implies that incorporating the Medina payroll record would merely form the
 22 basis of an affirmative defense presented on behalf of defendant Bolthouse, not that it serves as a
 23 basis of plaintiff’s claims. *See Khoja*, 899 F.3d at 1002–03 (“Submitting documents not
 24 mentioned in the complaint to create a defense is nothing more than another way of disputing the
 25 factual allegations in the complaint[.]”); *Ritchie*, 342 F.3d at 908 (declining to incorporate
 26 documents as part of the complaint when the documents did not form the basis of the complaint
 27 and were not referred to extensively in the complaint). In fact, plaintiff’s noncompliant wage
 28 claim is alleged generally without reference to a particular payroll record whatsoever, further
 showing that the Medina payroll record—which does not even resemble a weekly paystub, but
 rather is a purported total payroll history of plaintiff—is not integral to plaintiff’s claim based on

1 the face of the FAC. (*See, e.g.*, Doc. No. 1 at 21, ¶ 29 (“As a result of Defendants’ failure to
 2 compensate Plaintiff and the Class premium wages for overtime worked and for all hours worked,
 3 the wage statements issued to Plaintiff and the Class by Defendants did not comply with Labor
 4 Code §226 in that they did not accurately reflect all wages earned and due and owing.”).
 5 Bolthouse also fails to cite any case in which a court incorporated payroll records into a
 6 complaint without a specific reference to such records in the complaint and then allowed a
 7 specific payroll record to form the basis for dismissal of the complaint based upon an affirmative
 8 defense. On the other hand, for instance, district courts have rejected attempts by defendants
 9 seeking to have a release agreement which purportedly barred the plaintiff’s claims to be
 10 incorporated into the complaint for purposes of ruling on a motion to dismiss. *See Aledlah v. S-L*
 11 *Distribution Co., LLC*, No. 20-cv-00234-JSC, 2020 WL 2927980, at *3 (N.D. Cal. June 3, 2020)
 12 (finding other courts’ reasoning that an “extrinsic release would bar the plaintiffs’ claims, [thus]
 13 the release documents were integral” to be unsupported by Ninth Circuit law and would
 14 “obliterate[e] the general rule that courts may not consider material outside the pleadings when
 15 evaluating the sufficiency of a complaint”); *Mednick v. Virtual Sonics, Inc.*, No. 21-cv-3755-
 16 MRW, 2021 WL 4805194, at *2 (C.D. Cal. July 22, 2021) (“[D]istrict courts have declined to
 17 incorporate release agreements into civil complaints in evaluating dismissal motions in
 18 employment-related cases. . .[because] courts recognize that the existence or non-existence of a
 19 valid release is a defense to liability, not a fundamental basis of the plaintiff’s claim.”); *Almaznai*
 20 *v. S-L Distribution Co., LLC*, No. 20-cv-08487-JST, 2021 WL 4457025, at *4 (N.D. Cal. June 21,
 21 2021) (rejecting a statute of limitations argument, in part, because it depended on a release
 22 agreement that the court would not incorporate by reference because it only served to form an
 23 affirmative defense and was not integral to the complaint).⁵

24
 25 ⁵ The court also notes that Bolthouse’s argument for dismissal on statute of limitations grounds
 26 relies on Ms. Lopez’s declaration explaining the significance of coding on the Medina payroll
 27 record, which declaration was drafted after plaintiff filed his complaint. (Doc. No. 8-2 at ¶¶ 3–4.)
 28 Ms. Lopez’s explanation in this regard (e.g., notations next to each week of “Grow 46” versus
 “Grow 53”) is necessary in order to explain what the Medina payroll record purportedly shows—
 specifically, the payment of wages to plaintiff for work at a Bolthouse location for the period
 October 17–26, 2016, and that this one week represents the only week that plaintiff ever worked

1 The court finds that defendant Bolthouse has not presented adequate grounds on which
 2 this court could exercise its discretion to incorporate the Medina payroll record as part of the
 3 FAC, and therefore, the court declines Bolthouse's request to incorporate that record into the
 4 FAC. As a result, defendant Bolthouse's remaining arguments contending that plaintiff's first
 5 eight claims are barred under the applicable statute of limitations have necessarily been rendered
 6 moot because they all depended on the court concluding that the Medina payroll record
 7 represented plaintiff's last day of work with defendant Bolthouse. Accordingly, the court denies
 8 Bolthouse's motion to dismiss to the extent it is based on a statute of limitations defense.⁶

9 **B. Whether Plaintiff Alleged that Defendant Bolthouse was a Joint Employer**

10 Defendant Bolthouse next contends that all of plaintiff's claims against it must fail
 11 because the FAC does not "plead a single fact showing an employment relationship with
 12 Bolthouse." (Doc. No. 8 at 14, 17–19.) Defendant Bolthouse admits that defendant Medina
 13 employed plaintiff. (*Id.* at 10.) Whether the FAC sufficiently alleges that defendant Bolthouse
 14 was a joint employer of plaintiff along with defendant Medina implicates state law as to
 15 plaintiff's California Labor Code claims and federal law as to plaintiff's AWPA claim.

16 To be held liable for any violations under the California Labor Code, defendant Bolthouse
 17 must be plaintiff's employer. *Lesnik v. Eisenmann SE*, 374 F. Supp. 3d 923, 947 (N.D. Cal.
 18 2019). "California courts rely on the definitions provided in California's Industrial Welfare

19 at a defendant Bolthouse location. (Doc. No. 8-2 at ¶¶ 3–4.) Were the court to incorporate the
 20 Medina payroll record as part of the FAC, the document would have to be construed in the light
 21 most favorable to plaintiff without reference to an explanatory declaration submitted by
 22 defendants that was not in existence when the complaint was filed. Doing so, the court could not
 23 possibly conclude that Medina payroll record represents the last day plaintiff worked at a
 24 defendant Bolthouse location because nothing in the document establishes or even implies that.
See Razo v. AT&T Mobility Servs., LLC, No. 1:20-cv-00172-NONE-HBK, 2021 WL 4804231, at
 25 *2 (E.D. Cal. Oct. 14, 2021) (rejecting evidence explaining the meaning of an earnings statement
 26 that was incorporated by a specific reference made in the complaint because "documents
 27 incorporated by reference must be viewed in a light most favorable to plaintiff").

28 ⁶ The two district court cases cited in defendant Bolthouse in reply regarding the appropriateness
 29 of raising a statute of limitations defense through a motion to dismiss (Doc. No. 12 at 12) are
 30 inapposite because in those cited cases the statute of limitations defense was apparent from the
 31 face of the allegations of the complaint or judicially noticeable documents. As noted, such is not
 32 the case here.

1 Commission's ('IWC') wage orders in determining whether an employment relationship exists."

2 *Rodriguez v. SGLC, Inc.*, No. 2:08-cv-01971-MCE-KJN, 2012 WL 5704403, at *12 (E.D. Cal.

3 Nov. 15, 2012). Under the IWC's wage orders, "[t]o employ . . . has three alternative definitions.

4 It means: (a) to exercise control over wages, hours or working conditions, *or* (b) to suffer or

5 permit to work, *or* (c) to engage, thereby creating a common law employment relationship."

6 *Martinez v. Combs*, 49 Cal. 4th 35, 64 (2010); *see also* Cal. Code Regs. tit. 8, § 11140.

7 The AWPA has adopted the Fair Labor Standards Act (FLSA) definition of "employ." 29
U.S.C. § 1802(5). Under the FLSA, the term "employ" means "to suffer or permit to work." 29
U.S.C. § 203(g). The regulations implementing the AWPA also provide that the "definition of
10 the term employ includes the joint employment principles applicable under the [FLSA]." 29
C.F.R. § 500.20(h)(5); *see also* *Torres-Lopez v. May*, 111 F.3d 633, 639 (9th Cir. 1997).

11 Generally, joint employment will describe a situation where a single employee works for more
13 than one employer at the same time. *Doe v. D.M. Camp & Sons*, 624 F. Supp. 2d 1153, 1164
14 (E.D. Cal. 2008). To determine whether a joint employer relationship exists under the FLSA,
15 courts in the Ninth Circuit employ a four-part "economic reality" test that evaluates whether an
16 entity: "(1) had the power to hire and fire the employees, (2) supervised and controlled employee
17 work schedules or conditions of employment, (3) determined the rate and method of payment,
18 and (4) maintained employment records." *Lesnik*, 374 F. Supp. 3d at 942 (quoting *Bonnette v.*
19 *Cal. Health & Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983), *abrogated on other grounds*
20 by *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985)).

21 In his FAC, plaintiff has not alleged sufficient facts to support his asserted legal
22 conclusion that defendant Bolthouse jointly employed him with defendant Medina, or any one of
23 the other three named defendants.⁷ Plaintiff simply does not allege any facts regarding his
24 relationship with defendant Bolthouse. In fact, defendant Bolthouse is not even mentioned in the
25

26 ⁷ Plaintiff's FAC does allege that defendant Medina was the "former employer of Plaintiff and
the current or former employer of the putative Class members." (Doc. No. 1 at 14, § 4.) As noted
27 above, defendant Bolthouse agrees, stating in its pending motion that "Defendant [Medina]
briefly employed Plaintiff . . . from October 17, 2016 to May 28, 2017 as an agricultural worker."
28 (Doc. No. 8 at 10.)

1 FAC because all “defendants” are lumped together therein by plaintiff as a single entity. The
2 dearth of factual allegations and failure to differentiate (or even name) the individual entity
3 defendants compels the conclusion that plaintiff has not adequately alleged the existence of an
4 employment relationship with defendant Bolthouse under state or federal law. *See Haralson v.*
5 *United Airlines, Inc.*, 224 F. Supp. 3d 928, 939 (N.D. Cal. 2016) (“While [the] plaintiff is not
6 required to conclusively establish that defendants were her joint employers at the pleading stage,
7 [the] plaintiff must at least allege *some* facts in support of this legal conclusion.”); *Johnson v.*
8 *Serenity Transportation, Inc.*, No. 3:15-cv-02004-JSC, 2016 WL 270952, at *11 (N.D. Cal. Jan.
9 22, 2016) (“[A] plaintiff seeking to hold multiple entities liable as joint employers must plead
10 specific facts that explain how the defendants are related and how the conduct underlying the
11 claims is attributable to each defendant.”); *Terrell v. Samuel, Son & Co. (USA)*, No. 5:20-cv-
12 00587-JGB-KK, 2020 WL 5372107, at *3 (C.D. Cal. Apr. 23, 2020) (granting a motion to
13 dismiss where “Plaintiff’s allegations against [alleged joint employer] Defendants are entirely
14 undifferentiated”).

15 Although almost all of plaintiff’s allegations are legal conclusions that the court may
16 disregard, *see, e.g.*, (Doc. No. 1 at 15, ¶¶ 6–8), he does allege that “Plaintiffs entered into working
17 arrangements with Defendants . . . at or near the time Defendants hire[d] each plaintiff” and that
18 defendants allegedly “employed . . . thousands of seasonal agricultural workers.” (*Id.* at 19, ¶
19 19.) However, the FAC fails to allege even the most basic facts regarding these working
20 arrangements such as, identifying the parties to the working arrangements and identifying what
21 role each party played with respect to hiring and firing, setting of wages and hours, directing
22 when and where workers were to report to, and so on. *See Perez v. DNC Parks & Resorts at*
23 *Asilomar, Inc.*, No. 1:19-cv-00484-DAD-SAB, 2019 WL 5618169, at *7 (E.D. Cal. Oct. 31,
24 2019) (“To make a plausible joint employer claim, plaintiff must allege some specific facts such
25 as whether defendant pays the employee’s salary and taxes, owns the equipment necessary for the
26 employee to perform his job, has authority to hire, train, fire, or discipline the employee, or has
27 discretion to set the employee’s salary.”) (internal quotations omitted). Courts routinely dismiss
28 pleadings that are, like plaintiff’s FAC, bereft of alleged factual support for an asserted joint

1 employer relationship among several named entity defendants. *See, e.g., Valencia v. N. Star Gas*
 2 *Co.*, 291 F. Supp. 3d 1155, 1160–62 (S.D. Cal. 2018) (dismissing claims brought against a
 3 defendant where the plaintiff’s allegations that the defendant was a “co-employer responsible for
 4 all human resources functions . . . [that] sets and negotiates rates of pay” and “schedules and
 5 hours” were deemed insufficient to sufficiently assert a joint employer relationship under state
 6 and federal law); *Bravo v. On Delivery Servs., LLC*, No. 18-cv-01913-EMC, 2018 WL 2387835,
 7 at *1 (N.D. Cal. May 25, 2018) (granting a motion to dismiss because there were “no factual
 8 allegations in the complaint regarding the nature of the alleged joint relationship”); *Myles v.*
 9 *Builders Concrete, Inc.*, No. 1:21-cv-01309-DAD-BAK, 2022 WL 2318176, at *3 (E.D. Cal. June
 10 28, 2022) (dismissing all claims brought against four entity defendants where the only factual
 11 allegations in support of a joint employer relationship were that it was “evidenced by [plaintiff’s]
 12 paychecks and company documents”).

13 For the noted reasons, plaintiff has failed to state any cognizable claims against defendant
 14 Bolthouse for violations of the California Labor Code or the AWPA because his FAC is lacking
 15 any factual allegations that defendant Bolthouse jointly employed plaintiff. Thus, defendant
 16 Bolthouse’s motion to dismiss will be granted to the extent it is based on plaintiff’s failure to
 17 adequately allege the existence of a joint employer relationship.⁸

18 ⁸ The court will also dismiss plaintiff’s remaining claim brought against defendant Bolthouse
 19 under California’s UCL because it is derivative of his inadequately alleged violations of
 20 California’s Labor Code. (Doc. No. 1 at 29); *see Cleveland v. Groceryworks.com, LLC*, 200 F.
 21 Supp. 3d 924, 961 (N.D. Cal. 2016) (“[L]iability under the UCL is generally derivative of liability
 22 under another statutory violation.”); *Tan v. GrubHub, Inc.*, 171 F. Supp. 3d 998, 1011 (N.D. Cal.
 23 2016) (dismissing UCL claim to the extent it was based on California Labor Code violations that
 24 were also being dismissed). Moreover, as defendant Bolthouse points out, plaintiff “seek[s] a
 25 declaration” that the conduct alleged in the complaint is “unfair and unlawful” and that
 26 “injunctive relief should be issued restraining Defendants from engaging in any of the above
 27 described unfair and unlawful business practices *in the future*,” but also concedes that he was
 28 “discharged and/or resigned from Defendants employ.” (Doc. No. 1 at 17, 26, 30, 32) (emphasis
 added). The Ninth Circuit has held that former employees cannot seek declaratory or injunctive
 relief for ongoing or future employment practices and policies, and plaintiff includes no
 allegations in his FAC or presents any arguments in his opposition to the pending motion
 addressing how injunctive or declaratory relief would be appropriate in this case. *See Bayer v.*
Neiman Marcus Grp., Inc., 861 F.3d 853, 864–65, 867–68 (9th Cir. 2017) (holding that former
 employee’s requests for injunctive and declaratory relief were moot because there was no
 “reasonably certain basis for concluding he or she has some personal need for prospective relief”

1 **C. Whether to Stay or Dismiss This Action Under *Colorado River***

2 Lastly, defendant Bolthouse contends that this action should be dismissed or stayed
 3 pursuant to the Supreme Court's holding in *Colorado River Water Conservation District v.*
 4 *United States*, 424 U.S. 800 (1976). (Doc. No. 8 at 22–24.)

5 Although federal courts have a “virtually unflagging obligation . . . to exercise the
 6 jurisdiction given them,” the Supreme Court has recognized that federal courts may dismiss or
 7 stay a case “in situations involving the contemporaneous exercise of concurrent jurisdictions . . .
 8 by state and federal courts.” *Colorado River*, 424 U.S. at 817. This power stems from the court’s
 9 “considerations of ‘wise judicial administration, giving regard to conservation of judicial
 10 resources and comprehensive disposition of litigation.’” *Id.* (quoting *Kerotest Mfg. Co. v. C-O-*
 11 *Two Fire Equipment Co.*, 342 U.S. 180, 183 (1952)). The court’s power to stay or dismiss a case
 12 under *Colorado River*, however, is “considerably . . . limited” and only applies in “exceptional”
 13 circumstances. *Id.* at 818; *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460
 14 U.S. 1, 25–26 (1983) (noting that the court’s task is “not to find some substantial reason for
 15 the *exercise* of federal jurisdiction” but rather “to ascertain whether there exist ‘exceptional’
 16 circumstances, the ‘clearest of justifications,’ that can suffice under *Colorado River* to justify
 17 the *surrender* of that jurisdiction”); *Smith v. Cent. Ariz. Water Conservation Dist.*, 418 F.3d 1028,
 18 1033 (9th Cir. 2005) (noting that circumstances warranting a stay under the *Colorado River*
 19 doctrine are “exceedingly rare”); *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002) (“[T]he
 20 *Colorado River* doctrine is a narrow exception.”).

21 In the Ninth Circuit, eight factors are to be considered in determining the appropriateness
 22 of a dismissal or stay under *Colorado River*:

23 (1) which court first assumed jurisdiction over any property at
 24 stake; (2) the inconvenience of the federal forum; (3) the desire to
 25 avoid piecemeal litigation; (4) the order in which the forums
 obtained jurisdiction; (5) whether federal law or state law provides

26 or that the employer’s policy “has adversely affected and continues to affect a present interest” of
 27 the plaintiff’s). Accordingly, the court will also dismiss plaintiff’s request for injunctive and
 28 declaratory relief without leave to amend. *See Barajas v. Blue Diamond Growers Inc.*, No. 1:20-
 cv-0679-JLT-SKO, 2022 WL 1103841, at *23 (E.D. Cal. Apr. 13, 2022) (dismissing a prayer for
 injunctive relief without leave to amend) (collecting cases).

1 the rule of decision on the merits; (6) whether the state court
 2 proceedings can adequately protect the rights of the federal
 3 litigants; (7) the desire to avoid forum shopping; and (8) whether
 4 the state court proceedings will resolve all issues before the federal
 5 court.

6 *R.R. Street & Co. Inc. v. Transport Ins. Co.*, 656 F.3d 966, 978–79 (9th Cir. 2011) (citing *Holder*,
 7 305 F.3d at 870). “These factors are to be applied in a pragmatic and flexible way, as part of a
 8 balancing process rather than as a ‘mechanical checklist.’” *Am. Int’l Underwriters (Philippines), Inc. v. Continental Ins. Co.*, 843 F.2d 1253, 1257 (9th Cir. 1988). “The weight to be given to any
 9 one factor may vary greatly from case to case, depending on the particular setting of the case.
 10 Some factors may not apply in some cases, and, in some cases, a single factor may decide
 11 whether a stay is permissible.” *United States v. State Water Res. Control Bd.*, 988 F.3d 1194,
 12 1203 (9th Cir. 2021) (internal quotations and citations omitted).

13 In the Ninth Circuit, particular attention is paid to the eighth factor: “In this Circuit, the
 14 narrow *Colorado River* doctrine requires that the pending state court proceeding resolve all issues
 15 in the federal suit.” *Holder*, 305 F.3d at 859. Indeed, if “there exists a substantial doubt as to
 16 whether the state court proceeding will resolve all of the disputed issues in [the federal] case, it is
 17 unnecessary for [the court] to weigh the other factors included in the *Colorado River* analysis.”
 18 *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 n.7 (9th Cir. 1993). In this regard,
 19 the Ninth Circuit has explained:

20 Under the rules governing the *Colorado River* doctrine, the
 21 existence of a substantial doubt as to whether the state proceeding
 22 will resolve the federal action precludes the granting of a stay. . . .
 23 “When a district court decides to . . . stay under *Colorado River*, it
 24 presumably concludes that the parallel state-court litigation will be
 25 an adequate vehicle for the complete and prompt resolution of the
 26 issues between the parties. *If there is any substantial doubt as to*
 27 *this*, it would be a serious abuse of discretion to grant the stay or
 28 dismissal at all. . . . Thus, the decision to invoke *Colorado River*
 29 necessarily contemplates that the federal court will have nothing
 30 further to do in resolving any substantive part of the case, whether it
 31 stays or dismisses.”

32 *Id.* at 913 (quoting *Moses H. Cone*, 460 U.S. at 28); *see also State Water*, 988 F.3d at 1204 (“We
 33 have repeatedly emphasized that a *Colorado River* stay is inappropriate when the state court
 34 proceedings will not resolve the entire case before the federal court.”). On the other hand, courts

1 should be “particularly reluctant to find that the actions are not parallel when the federal action is
 2 but a ‘spin-off’ of more comprehensive state litigation.” *Nakash v. Marciano*, 882 F.2d 1411,
 3 1417 (9th Cir. 1989).

4 Defendant Bolthouse contends that plaintiff Rhina Beatriz Carrillo filed a class action
 5 complaint in the Kern County Superior Court (the “*Carrillo* action”) on April 30, 2019, which is
 6 before plaintiff Julio Mayen filed this action on October 28, 2020, and that a stay of the present
 7 action is therefore warranted. (Doc. No. 8 at 23.) The complaint in the *Carrillo* action, attached
 8 to the declaration of defendant Bolthouse’s counsel filed in support of the pending motion, shows
 9 that it was brought against the same five defendants named in the present action and that nearly
 10 the same claims were asserted in both cases. (*Compare* Doc. No. 8-1 at 13–29 *with* Doc. No. 1 at
 11 12–31.) However, the claims asserted in the two actions differ slightly, because a claim under
 12 federal law for violation of the AWPA was asserted in the present action but not in the *Carrillo*
 13 action.⁹ (*Compare* Doc. No. 8-1 at 13 *with* Doc. No. 1 at 12.) Notwithstanding this difference,
 14 defendant Bolthouse argues that “the very same claims” pending in the *Carrillo* action are “now
 15 pending in this case” because plaintiff’s “time-barred AWPA claim [] should be dismissed,”
 16 meaning “the *Carrillo* action would conclusively resolve all claims brought by Plaintiff in this
 17 action.” (Doc. Nos. 8 at 23; 12 at 11.) The court observes that plaintiff has failed to
 18 meaningfully oppose defendant Bolthouse’s argument that this action should be dismissed or
 19 stayed pursuant to the Supreme Court’s decision in *Colorado River*. (Doc. No. 11 at 9.)

20 Nonetheless, the court concludes that consideration of the *Colorado River* factors weighs
 21 against issuing a stay.¹⁰ Beginning with the eighth factor, which is dispositive, the court
 22 concludes that there is substantial doubt as to whether the proceedings in state court in the
 23 *Carrillo* action will resolve all the issues presented in this federal action. *See State Water*, 988

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 25 ⁹ In *Carrillo*, the plaintiff has asserted a claim for failure to maintain required records, which is
 absent in the present action. (*Compare* Doc. No. 8-1 at 13 *with* Doc. No. 1 at 12.)

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 27 ¹⁰ “Although *Colorado River* involved dismissal of a federal suit, we generally require a stay
 rather than a dismissal. That is because [a] stay ensures that the federal forum will remain open if
 for some unexpected reason the state forum . . . turn[s] out to be inadequate.” *State Water*, 988
 28 F.3d at 1202 n.3 (internal quotations and citations omitted).

1 F.3d at 1203 (“[T]h[e] [eighth] factor should be addressed ‘as a preliminary matter.’”). Although
 2 all but one of the claims brought in the *Carrillo* action and the present action overlap, a federal
 3 claim under the AWPA has not been asserted in the *Carrillo* action, and this difference alone is
 4 fatal to defendant Bolthouse’s request for a *Colorado River* stay. The *Carrillo* action simply
 5 cannot resolve plaintiff’s AWPA claim because the plaintiff in the *Carrillo* action did not assert
 6 that claim in the state forum.¹¹ *Id.* at 1204–08 (finding that the district court abused its discretion
 7 in issuing a partial stay of three state law claims that were “identical” to claims in a parallel state
 8 action brought by the same plaintiff with the same allegations underpinning the “identical” claims
 9 because the federal court action also included a fourth federal law claim that the state proceeding
 10 could not resolve “because the [plaintiff] ha[d] not raised such a claim in that forum”); *see also*
 11 *Martinez-Sanchez v. Anthony Vineyards, Inc.*, No. 1:19-cv-01404-DAD-JLT, 2020 WL 469341,
 12 at *5 (E.D. Cal. Jan. 29, 2020) (denying a stay under *Colorado River*, in part, due to the presence
 13 of an AWPA claim in the federal court action that was absent from the parallel state court action).
 14 Defendant Bolthouse only addresses this difference between the two actions by arguing that
 15 plaintiff’s AWPA claim is barred under the applicable statute of limitations, thus maintaining that
 16 the two actions are identical *after* dismissing the AWPA claim. (Doc. Nos. 8 at 23 n.4; 12 at 11.)
 17 But as the court has concluded above, it will not reach defendant Bolthouse’s statute of
 18 limitations arguments brought in the pending motion to dismiss, and thus plaintiff’s federal
 19 AWPA claim remains in this action. *Moses H. Cone*, 460 U.S. at 26 (“[T]he presence of federal-
 20 law issues must always be a major consideration weighing against surrender.”); *State Water*, 988
 21 F.3d at 1206–07 (“There is a strong presumption that the presence of an additional claim in the
 22 federal suit means that *Colorado River* is inapplicable.”).

23 In addition, due to the paucity of factual allegations presented in the operative complaints
 24 in both actions and the lack of information before the court regarding the status of class

25 ¹¹ The Ninth Circuit in *State Water* found that the strong presumption against staying an action
 26 could be overcome through “clear-cut evidence of forum shopping.” *State Water*, 988 F.3d at
 27 1206–07. However, here, defendant Bolthouse does not argue that plaintiff was forum shopping,
 28 nor could it, because this case is only in federal court because of defendant Bolthouse’s removal
 of the case. Otherwise, both actions would have been pending in the Kern County Superior
 Court.

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certification in *Carrillo*,¹² the court has no assurance that the *Carrillo* action encompasses plaintiff as a class member or that it covers the factual theories underpinning plaintiff’s claims brought in this case. In short, it remains unclear whether resolution of the purportedly overlapping state law claims in the *Carrillo* action would completely resolve the present dispute between plaintiff Julio Mayen and the common defendants. *Moses H. Cone*, 460 U.S. at 28 (noting a district court will find a *Colorado River* stay appropriate when it “concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues *between the parties*”); *State Water*, 988 F.3d at 1204 (“[T]he requirement of ‘parallel’ state court proceedings implies that those proceedings are sufficiently similar to the federal proceedings to provide relief for *all of the parties’ claims.*”) (quoting *Intel Corp.*, 12 F.3d at 913 n.4).

15 Because the court has substantial doubt that the *Carrillo* action will resolve the entire case
16 before this federal court, a stay under *Colorado River* is inappropriate and the court need not
17 address the other relevant factors. *See Intel Corp.*, 12 F.3d at 913 n.7 (“Since we find that there
18 exists a substantial doubt as to whether the state court proceedings will resolve all of the disputed
19 issues in this case, it is unnecessary for us to weigh the other factors included in the *Colorado*
20 *River* analysis.”). Accordingly, defendant Bolthouse’s motion to stay or dismiss this action under
21 *Colorado River* will be denied.

D. Leave to Amend

Having determined that all of plaintiff's claims against defendant Bolthouse should be dismissed based on plaintiff's failure to adequately allege a joint employer relationship, the court must determine whether plaintiff should be granted leave to file a second amended complaint to

²⁷ ¹² The only information before the court regarding the status of the *Carrillo* action is defendant
²⁸ Bolthouse's contention in its reply brief that the *Carrillo* action "has progressed substantially
further than this federal action through extensive discovery." (Doc. No. 12 at 11.)

1 attempt to cure the noted pleading deficiency.

2 “Dismissal without leave to amend is proper if it is clear that the complaint could not be
3 saved by amendment.” *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051 (9th Cir. 2008). To the
4 extent that the pleadings can be cured by the allegation of additional facts, however, courts will
5 generally grant leave to amend. *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv. Inc.*,
6 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted). “The court considers five factors in
7 assessing the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing
8 party, futility of amendment, and whether the plaintiff has previously amended the complaint.”
9 *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).

10 In his opposition, plaintiff requests—in a perfunctory manner—that the court grant him
11 further leave to amend. (Doc. No. 11 at 9.) Defendant Bolthouse maintains that plaintiff’s
12 opposition brief does not identify any alleged facts that plaintiff could plead if granted such leave,
13 but does not assert that the granting of further leave to amend would result in prejudice, bad faith,
14 or undue delay. (Doc. No. 12 at 10.) The court agrees that plaintiff has offered little reason to
15 suggest that he is capable of adequately alleging a joint employer relationship with respect to
16 defendant Bolthouse. However, at this early stage of the litigation, and given that plaintiff has not
17 had an opportunity to address the pleading deficiencies now identified by the court, leave to file
18 an amended pleading is appropriate. See *Corinthian Colleges*, 655 F.3d at 995 (“The standard for
19 granting leave to amend is generous.”); *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032,
20 1041 (9th Cir. 2015) (“It is black-letter law that a district court must give plaintiffs at least one
21 chance to amend a deficient complaint, absent a clear showing that amendment would be futile.”).
22 Leave to amend will be limited, however, to additional allegations of a joint employer
23 relationship between plaintiff and defendant Bolthouse. Plaintiff should heed the court’s
24 direction in this order as to what the law requires to adequately allege a joint employer
25 relationship and consider whether he is able to do so in good faith before filing a second amended
26 complaint.

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CONCLUSION

For the reasons explained above:

1. The court denies in part and grants in part defendant Bolthouse's motion to dismiss (Doc. No. 8) as follows:
 - a. The court grants defendant Bolthouse's motion to dismiss plaintiff's first through eighth claims due to plaintiff's failure to adequately allege a joint employer relationship;
 - b. The court grants defendant Bolthouse's motion to dismiss plaintiff's ninth claim to the extent it is derivative of plaintiff's insufficiently alleged first through eighth claims;
 - c. The court grants defendant Bolthouse's motion to dismiss plaintiff's prayer for injunctive relief and request for declaratory relief without leave to amend; and
 - d. Plaintiff is granted leave to file a second amended complaint to address the deficiencies identified in this order with respect to the existence of a joint employer relationship as to defendant Bolthouse;
 - e. Defendant Bolthouse's motion to dismiss or stay this action is otherwise denied.
2. The court dismisses defendants Bolt House Farms, Bolthouse Farms Cuyama, and Bolthouse Farms Kern County from this action pursuant to Federal Rule of Civil Procedure 4(m).
3. The Clerk of the Court is directed to update the docket to reflect that defendants Bolt House Farms, Bolthouse Farms Cuyama, and Bolthouse Farms Kern County have been terminated from this action.

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1 4. Within twenty-one (21) days of the date of this order, plaintiff shall file any second
2 amended complaint or notify the court of his intention to proceed on his first
3 amended complaint only against the remaining defendant Medina.

4 IT IS SO ORDERED.

5 Dated: August 17, 2022

Dale A. Droyd
6 _____
7 UNITED STATES DISTRICT JUDGE

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